



H.C.P(MD)No.1333 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **11.12.2023**

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

H.C.P(MD)No.1333 of 2023

N.Sivanukumar @ Sivankumar

.. Petitioner

VS

1.State of Tamil Nadu,
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The District Collector and District Magistrate,
Ramanathapuram District, Ramanathapuram.

3.The Superintendent of Prison,
Central Prison,
Madurai.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus calling for the entire records connected with the detention order of the respondent No.2 in S.R.No. 04/Goonda/2023 dated 29.08.2023 and quash the same and direct the respondents to produce the detenu, namely the petitioner's son i.e., Abinesh, son of Sivankumar aged about 19 years, who is detained in Central Prison, Madurai, before this Court and set him at liberty forthwith.



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For Petitioner : Mr.N.Pragalathan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

When the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] was listed before us on 03.11.2023, this Bench made the following order and a scanned reproduction of the same is as follows:

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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

ORDER

[Order of the Court was made by **M.SUNDAR, J.**]

Captioned Habeas Corpus Petition has been filed in this Court on 31.10.2023 *inter alia* assailing a 'detention order dated 29.08.2023 bearing reference S.R.No.04/Goenda/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience, clarity and brevity] made by 'second respondent' [hereinafter 'Detaining Authority' for the sake of convenience].

2.To be noted, the father of the detenu is the petitioner.

3.Mr.N.Pragalathan, learned counsel on record for petitioner is before us. Learned counsel for petitioner submits that ground case *qua* the detenu is for alleged offences under Sections 147, 148, 294(b), 324, 397, 506(i) and 302 of the Indian Penal Code, 1860 (Act 45 of 1860) [hereinafter 'IPC' for the sake of brevity] r/w. Section 25(1-A) of Arms Act in Crime No.76 of 2023 on the file of Keelathoival Police Station.

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4.The aforementioned impugned preventive detention order has been made on the premise that the detenu is a 'Goonda' under Section 2(f) of The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Siam-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982) [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity].

5.The impugned preventive detention order has been assailed *inter alia* on the ground that a similar case bail order furnished in the grounds booklet furnished to the detenu is not similar in nature.

6.*Prima facie* case made out for admission. Admit. Issue *Rule nisi* returnable by four [4] weeks.

7.Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all respondents. List the captioned Habeas Corpus Petition accordingly.

IM.S.J.1 & IR.S.V.J.1
03.11.2023

NR

2. The aforementioned 03.11.2023 order captures all essentials, i.e., all facts that are imperative for appreciating this final order and therefore, we are not setting out the facts again in this final order. Suffice to say that aforementioned order shall be read as an integral part and parcel of this final order. Be that as it may, we are using the short forms, short references and abbreviations used in the order dated 03.11.2023 in this order also for the sake of convenience and clarity.

3. Mr.N.Pragalathan, learned counsel on record for petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for all respondents are before us.



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4. There is no adverse case. The ground case which constitutes sole substratum of the impugned preventive detention order is Crime No.40 of 2023 on the file of Mudukulathur Police Station for the alleged offence under Section 379 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 21(1) of 'The Mines and Minerals (Development and Regulation) Act, 1957' [hereinafter 'MMDA Act' for the sake of convenience and clarity]. Considering the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix of the case.

5. As would be evident from paragraph 5 of the Admission Board order, at the time of admission, learned counsel on record for petitioner posited his challenge to the impugned preventive detention order on the ground that similar case relied on by the detaining authority is not similar and therefore, subjective satisfaction regarding imminent possibility of detenu being enlarged on bail is impaired but today, learned counsel changed his line of attack and predicated his campaign against the impugned preventive detention order on the point that the detenu was arrested on 18.06.2023 but the impugned preventive detention order has been made only on 29.08.2023 resulting in live and proximate link between grounds and purpose of detention getting snapped.



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6. Mr.Thiruvadi Kumar, learned State Additional Public Prosecutor, submits that materials had to be collected and time was consumed in this exercise. Considering the facts and circumstances of the case and nature of ground case, we find that this explanation of learned State Additional Public Prosecutor is unacceptable.

7. We remind ourselves of *Sushanta Kumar Banik's* case [*Sushanta Kumar Banik Vs. State of Tripura & others reported in 2022 LiveLaw (SC) 813 : 2022 SCC OnLine SC 1333*]. To be noted, **Banik** case arose under 'Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988' [hereinafter 'PIT NDPS Act' for the sake of brevity] in Tirupura, wherein after considering a proposal by a Sponsoring Authority and after noticing the trajectory the matter took, Hon'ble Supreme Court held that the 'live and proximate link between grounds of detention and purpose of detention snapping' point should be examined on a case to case basis. Hon'ble Supreme Court has held in *Banik* case law that this point has two facets. One facet is 'unreasonable delay' and the other facet is 'unexplained delay'. We find that the captioned matter falls under latter facet i.e., unexplained delay.



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8. To be noted, *Banik* case has been respectfully followed by this Court in *Gomathi Vs. The Principal Secretary to Government and others* reported vide Neutral Citation of Madras High Court being **2023/MHC/334**, *Sadik Basha Yusuf Vs. The State of Tamil Nadu and others* reported vide Neutral Citation of Madras High Court being **2023/MHC/733**, *Sangeetha Vs. The Secretary to the Government and others* reported vide Neutral Citation of Madras High Court being **2023:MHC:1110**, *N.Anitha Vs. The Secretary to Government and others* reported vide Neutral Citation of Madras High Court being **2023:MHC:1159** and a series of similar orders in HCP cases.

9. To be noted, the impugned preventive detention order is predicated on a solitary case viz., Crime No.40 of 2023 on the file of Mudukulathur Police Station, for alleged offence under Section 379 of IPC read with Section 21(1) of MMDA Acct and therefore this solitary case is the sole substratum of the impugned preventive detention order.

10. Before concluding, we also remind ourselves that preventive detention is not a punishment and HCP is a high prerogative writ.



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WEB COPY 11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 29.08.2023 bearing S.R.No. 04/Goonda/2023 made by the second respondent is set aside and the detenu Thiru.Abinesh, aged 19 years, son of Thiru.Sivankumar, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
11.12.2023

Index : Yes
Neutral Citation : Yes
PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Madurai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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- To
- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.
 - 2.The District Collector and District Magistrate,
Ramanathapuram District, Ramanathapuram.
 - 3.The Superintendent of Prison,
Central Prison,
Madurai.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 5. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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M.SUNDAR, J.
and
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